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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 13/2013*, **

Communication submitted by:	Michael Lockrey (represented by the Australian Centre for Disability Law)
Alleged victim:	The author
State party:	Australia
Date of communication:	8 April 2013 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 7 June 2014 (not issued in document form)
Date of adoption of Views:	1 April 2016
Subject matter:	Participation of deaf people in jury duty
Procedural issues:	Admissibility of claims
Substantive issues:	Equality and non-discrimination; reasonable accommodation; equal recognition before the law; freedom of expression; political participation
Articles of the Convention:	2, 4, 5, 9, 12, 13, 21 and 29
Articles of the Optional Protocol:	2 (d) and (e)

* Adopted by the Committee at its fifteenth session (29 March-21 April 2016).

** The following members of the Committee participated in the examination of the communication: Mohammed Al-Tarawneh, Danlami Umaru Basharu, Monthian Buntan, Maria Soledad Cisternas Reyes, Theresia Degener, Kim Hyung Shik, Diane Kingston, Stig Langvad, László Gábor Lovászy, Martin Babu Mwesigwa, Carlos Alberto Parra Dussan, Coomaravel Pyaneandee, Silvia Judith Quan-Chang, Jonas Ruskus, Damjan Tatić and You Liang.

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1. The author of the communication is Michael Lockrey, an Australian national born on 28 December 1969. He claims to be a victim of a violation by Australia, of articles 2, 4, 5, 9, 12, 13, 21 and 29 of the Convention. He is represented by the Australian Centre for Disability Law. The Convention and the Optional Protocol entered into force for the State party on 17 August 2008 and on 19 September 2009, respectively.

A. Summary of the information and arguments submitted by the parties

Facts as presented by the author

2.1 The author is deaf and requires real-time steno-captioning of formal communications in order to communicate with others. By notice of 28 February 2012, the Sheriff of New South Wales summoned the author to serve as a juror on 26 March 2012 (the first summons). Between 28 February and 19 March 2012, the author repeatedly addressed the Office of the Sheriff to request that steno-captioning of proceedings be made available to him so that he could participate in the jury selection process on an equal basis with others. He did not get a reply. On 19 March 2012, the author reiterated his request through e-mail to the Office of the Sheriff, to no avail.

2.2 On 26 March 2012, the author received a letter from the Sheriff, stating that his request to be excused from jury duty had been declined. The author had never made such a request. On 28 March 2012, he contacted the Office of the Sheriff by telephone. He informed that he did not wish to be excused from jury duty, and reiterated his request for real time steno-captioning. His request was rejected and he was advised to submit a medical certificate certifying that he is deaf or otherwise he would face a fine of $1,100 for failing to attend jury service. The author did not submit a medical certificate as he did not consider himself incapable of performing jury duty. He has not received any fine to date.

2.3 By notice of 3 May 2012, the Sheriff again summoned the author to serve as a juror on 30 May 2012 (the second summons). By facsimile letter dated 24 May 2012, the author notified the Sheriff that he was eligible, capable and willing to serve as a juror and required steno-captioning as an adjustment. He insisted that the Sheriff provide steno-captioning or else he would lodge a complaint alleging discrimination on the basis of disability with the Australian Human Rights Commission under the Disability Discrimination Act 1992.[1] He did not receive any reply. On 30 May 2012, the author presented himself before the Lismore Court. He was advised by the Sheriff's clerk that steno-captioning would not be provided to him. The author suggested to the Court Officer that he could participate by means of a personal "Court Reporter" communication device, which would convert speech to text and demonstrated this device to the Court Officer. He was informed that he would not be permitted to participate in the jury selection process as he was deaf.

2.4 By notice dated 13 July 2012, the Sheriff again summoned the author to serve as a juror on 15 August 2012 (the third summons). By letter of 20 July 2012, the author reiterated his willingness to serve as a juror and again insisted on the provision of steno-captioning, otherwise, he would lodge a complaint for discrimination on the basis of disability with the Australian Human Rights Commission under the Disability Discrimination Act. On 27 July 2012, the Sheriff rejected the author's request noting that "participation in the jury process by an individual with a hearing impairment is possible ... through the use of hearing loops. While real-time captioning could be made available for the presentation of evidence in the court room ..., section 48 of the Jury Act 1977 does not allow for real-time captioning to be used during Jury room deliberations by members of the

[1] Unless otherwise specified, "Disability Discrimination Act" refers to the national Disability Discrimination Act of 1992.

jury [as it] would introduce a non-jury person who is not summoned and selected through the random ballot process into the jury deliberation room. The deliberation process is confidential and jurors are required to maintain this confidentiality." The author argues that he is profoundly deaf and cannot hear with the hearing loop system. He further submits that section 48 of the Jury Act 1977 (New South Wales) does not regulate the use of real-time captioning in the jury room or the participation of deaf persons in jury duty.

2.5 On 2 April 2012, the author lodged a complaint with the Australian Human Rights Commission pursuant to section 46P of the Australian Human Rights Commission Act 1986 (Cth)[2] alleging that the State of New South Wales had unlawfully discriminated against him on the basis of his disability contrary to sections 5 and 24 of the Disability Discrimination Act in refusing to provide him with steno-captioning to enable his participation in the jury selection process on 26 March 2012. On 27 June 2012, the Sheriff provided the Commission with the same reply she had provided to the author and added that the Department of Attorney General and Justice, entity to which the Office of the Sheriff belongs, does not have a specific policy, which enables people who are deaf to perform jury service and in the context of the New South Wales Law Reform Commission's recommendation that, inter alios, people who are deaf should be qualified to serve on juries, the Government had responded that the rights of individuals with disabilities in that regard must be weighed against the rights of the accused to a fair trial and the need to maintain an efficient and effective jury system. The introduction of real-time captioning would require a change to the current legislation, which does not support such captioning and the Department is not able to provide that adjustment to members of the jury.

2.6 In June 2012 and August 2012, the author included additional allegations to his complaint, referring to the new rejections of his request for steno-captioning on 30 May and 15 August 2012. On 3 September 2012, the Sheriff replied to these submissions, in the same wording as in its previous replies, adding that:

> The Government carefully considered the Law Reform Commission's recommendations and ... determined that there would be no change to the legislative provisions that govern this area. Accordingly, a person's eligibility to serve as a juror is a matter for consideration on a case by case basis depending on the particular circumstances of the trial ... Those randomly selected from the Roll receive a Notice of Inclusion advising that their name has been randomly selected and included on ... the Jury Roll. At this stage a person can contact the Sheriff's Office if they wish to be excused from jury duty under Schedule 2 of the Jury Act ... When a person ... has a disability that needs to be accommodated, he/she is asked to contact the Office of the Sheriff so that an assessment can be made to establish if the disability can be accommodated at a particular courthouse. The Sheriff also has discretion ... to assess whether a person's disabilities prevent him/her from discharging jury duties.

2.7 On 23 November 2012, the Australian Human Rights Commission convened a confidential conciliation conference between the author and the State of New South Wales. No agreement was reached. The Australian Human Rights Commission therefore terminated the author's complaint on 29 November 2012. The author considers that he has exhausted all available domestic remedies. He argues that the Disability Discrimination Act prohibits discrimination on the basis of disability in specified areas of public life subject to certain exceptions and defences. The Anti-Discrimination Act,[3] also incorporates

[2] Commonwealth.

[3] Unless otherwise specified, "Anti-Discrimination Act" refers to the New South Wales Anti-Discrimination Act of 1977.

prohibitions of discrimination on the basis of disability in specified areas of public life. The author notes that jury duty is a "public duty or obligation" and is therefore not protected by these provisions. The Disability Discrimination Act prohibits discrimination on the basis of disability in the administration of Commonwealth laws and programmes; while the Jury Act 1977, under which the Sheriff performs functions related to the administration of juries, is a New South Wales State law. The Disability Discrimination Act and the Anti-Discrimination Act provide no prohibition of discrimination on the basis of disability in the administration of State laws and programmes.

2.8 The author's complaint to the Australian Human Rights Commission was based on the argument that the Sheriff was responsible for the provision of services and facilities to prospective and actual jurors. Under both the Disability Discrimination Act and the Anti-Discrimination Act, it is unlawful to discriminate on the basis of disability in the provision of public services and facilities. Neither the Australian Human Rights Commission, which is responsible for handling complaints under the Disability Discrimination Act, nor the New South Wales Anti-Discrimination Board, which is responsible for handling complaints under the Anti-Discrimination Act, have determinative powers with respect to complaints of discrimination.

2.9 The author notes that, to pursue the matter further, he would have to apply to the Federal Court or the Federal Circuit Court of Australia, which would have to determine whether the functions of the Sheriff for the selection and empanelment of jurors correspond to the "provision of services and facilities" to jurors, and if the conduct of the Sheriff falls within an area of public life in which discrimination is prohibited. The author was legally advised that the court would likely consider that jury duty and the functions of the Sheriff for the selection and empanelment of jurors do not to fall within an area of public life, and are thus not covered by the Disability Discrimination Act. If the author was to pursue his claim and fail, he would be liable to pay his own legal costs and those of the State of New South Wales, namely between $50,000 and $100,000,[4] which renders domestic remedies not reasonably available for him.

2.10 The author further submits that, in 2002, the New South Wales Attorney General referred the issue of whether deaf or blind people could serve as jurors to the New South Wales Law Reform Commission for inquiry. The Commission reported in September 2006, making four recommendations, including that the New South Wales Government make amendments to the Jury Act 1977 (New South Wales) to enable people who are blind or deaf to serve on juries.[5] In June 2010, the Government of New South Wales replied that it refused key components of the Commission's recommendations, including that deaf people could serve as jurors with the assistance of a steno-captioner.[6] In New South Wales, the Jury Act 1977, as amended by the Jury Amendment Act 2010, regulates who is qualified and eligible to perform jury duty. The author notes that the Sheriff has precluded him from serving as a juror under section 14 (4) of the Jury Act 1977.

2.11 The author further explains that the Anti-Discrimination Act and the Disability Discrimination Act do not make discrimination unlawful in all areas of public life and do not make it unlawful to discriminate on the basis of disability in the area of civic duties, including jury duty. No remedies are therefore available regarding his exclusion from a

[4] Approximately US$ 35,300-70,600.

[5] New South Wales Law Reform Commission, "Report 114: Blind or Deaf Jurors" (2006).

[6] Government of New South Wales, "Response to the NSW Law Reform Commission 'Report 114: Blind or Deaf Jurors'" (June 2010). Available from https://www.parliament.nsw.gov.au/la/papers/Pages/tabledpaperprofiles/government-response-to-the-new-south-wal_47367.aspx.

civic duty. If the author pursues a claim of disability discrimination, the Sheriff will argue that her functions in relation to jurors involve the exercise of statutory powers and duties, which do not involve the provision of services and thus fall outside the scope of the Disability Discrimination Act and the Anti-Discrimination Act. The author argues that, under Australian case law,[7] he would be required to identify the services that the Sheriff refused to provide, while the essence of his complaint is that she refused to provide the reasonable adjustment he would need to serve as a juror. Under domestic case-law, reasonable adjustment is not a "service", and an attempt to establish that the Sheriff provides "services" to all jurors has poor prospects of success. The author refers to additional national jurisprudence under which claims of disability discrimination under the Disability Discrimination Act are determined in a normative context, which involves a court examining the broader obligations and responsibilities of the alleged discriminator.[8] Furthermore, the Sheriff contends that she is obliged to exclude the author from performing jury duty because of the rule that jurors must deliberate in private. According to case law, this rule provides that if a "stranger" is present for a substantial time during the jury's deliberations, its verdict is vitiated. In the light of that jurisprudence, even if a court finds that the Sheriff provided "services" to jurors, it will probably conclude that the "true basis" for the Sheriff's conduct was not disability-based discrimination, but the obligation to protect the integrity of jury deliberations. Moreover, under section 49 B of the Anti-Discrimination Act, the definition of discrimination on the basis of disability does not include the denial of reasonable adjustment. Even if it is established that the Sheriff provides jurors with "services", it would therefore remain difficult to prove that she had an obligation to provide the author with steno-captioning as a necessary adjustment. The author finally submits that claims under the Disability Discrimination Act and the Anti-Discrimination Act are notoriously difficult to pursue and frequently result in very protracted and complex proceedings.

The complaint

3.1 The author claims that the Sheriff's actions constitute a violation of his right to equal recognition before the law as guaranteed under article 12 of the Convention. He considers that the Sheriff's statements to the Australian Human Rights Commission imply that deaf persons are inherently unable to sufficiently comprehend the legal process, and that their participation would compromise the right to a fair trial. He considers that such position violates his right to enjoy legal capacity on an equal basis with others. The author also submits that the refusal to permit steno-captioning constitutes a violation of: (a) his right to access the support he requires to exercise his legal capacity to perform jury duty pursuant to article 12 (3) of the Convention; (b) his right to non-discrimination under articles 5 and 12 of the Convention; and (c) his freedom to seek, receive and impart information and ideas on an equal basis with others through a form of communication of his choice pursuant to article 21 of the Convention.

3.2 With regard to the alleged violation of article 13 of the Convention, the author claims that the refusal to permit steno-captioning constitutes a violation of his rights to: (a)

[7] The author refers to *Waters v. Public Transport Corporation* [1991] HCA 49; 173 CLR 349; *IW v. City of Perth* [1997] HCA 30; 191 CLR 1; *Rainsford v. Victoria* (No. 2) (2004) 184 FLR 110; *Rainsford v. Victoria* (2005) 144 FCR 279; *Vintila v. Federal Attorney-General* [2001] FMCA 110; *AB v. Registrar of Births, Deaths and Marriages* (2006) FCA 1071; *AB v. Registrar of Births, Deaths and Marriages* (2007) 162 FCR 528; *Secretary of the Department of Justice and Industrial Relations v. Anti-Discrimination Commissioner* (2003) 11 Tas R 324; *Commissioner of Police v. Mohamed* [2009] NSWCA 432.

[8] The author refers to *Purvis v. State of New South Wales (Department of Education and Training)* (2003) 217 CLR 92.

effective access to justice, including in relation to the provision of procedural accommodation; (b) non-discrimination contrary to articles 5 and 13 of the Convention; and (c) freedom to seek, receive and impart information and ideas on an equal basis with others through a form of communication of his choice, contrary to articles 13 and 21 of the Convention.

3.3 The author considers that steno-captioning should be seen as a form of "communication" of his choice in an "official interaction" within the meaning of article 21 of the Convention and, consequently, that the Sheriff's refusal constitutes a violation of his right to freedom of expression and non-discrimination in violation of articles 5 and 21.

3.4 As regards his claim under article 29 of the Convention, the author asserts that the participation in jury duty is a "political right" and that, as a component of the public administration of justice, the jury system is an aspect of the "conduct of public affairs" within the meaning of the article. Consequently, the author considers that the Sheriff's refusal to permit steno-captioning amounts to a violation of his right: (a) to enjoy political rights and the right to have access to public service on an equal basis with others; and (b) to non-discrimination in the enjoyment of his political rights.

3.5 The author finally submits that his rights under articles 5, 9, 12, 13, 21 and 29 have been violated as a consequence of the State party's failure to observe its obligations under the respective articles, read alone and in conjunction with articles 2 and 4 of the Convention.

State party's observations on the admissibility and merits

4.1 On 28 November 2014, the State party submitted its observations on the admissibility and merits of the present communication, as well as with respect to communication No. 11/2013. The State party accepts the general facts as stated by the author, but rejects the author's characterization of the Sheriff's actions and of the policy of the State of New South Wales with respect to deaf jurors. In particular, it submits that the Government of New South Wales provides reasonable accommodation for many people with disabilities who have been summoned to perform jury duty, such as hearing loops and infrared technology. In addition, the broader policy of the Government of New South Wales on the increased participation of persons with disabilities is outlined in its 10-year plan for the State under goal 14.[9] In that connection, the State party notes that, following the response of the Government of New South Wales to the report of the Law Reform Commission in 2010, the Department of Justice of New South Wales will undertake a review to consider reform opportunities, including with regard to the possibility of providing steno-captioning. It also notes that the Jury Amendment Act 2010 (New South Wales), which entered into force on 31 January 2014, amended the Jury Act 1977 (New South Wales) replacing ineligibility for jury duty with the capacity to be exempted for good cause. Under the amendment, a person who is unable, because of sickness, infirmity or disability, to discharge the duties of a juror will be eligible for a permanent exemption or exemption for "good cause", depending on the nature of the sickness, infirmity or disability.[10]

4.2 The State party further submits that the author has failed to exhaust all available domestic remedies as, after the complaint process before the Australian Human Rights Commission, he could have made an application to the Federal Court of Australia or the Federal Circuit Court within 60 days.[11] The author could have brought a complaint under

[9] Government of New South Wales, "NSW 2021: a plan to make NSW No. 1" (2011), p. 3.

[10] Explanatory note to the jury amendment bill 2010.

[11] Australian Human Rights Commission Act 1986 (Cth), section 46 PO (2).

the Disability Discrimination Act or the Anti-Discrimination Act, which he did not. As to the author's submission concerning the legal and financial risks, the State party refers to the conclusions of the Human Rights Committee that an author is required to "make use of all judicial or administrative avenues that offer him a reasonable prospect of redress".[12] The State party notes that article 2 (d) of the Optional Protocol does not apply where the referred domestic remedy is unreasonably prolonged or unlikely to bring effective relief; however, lack of financial means does not absolve the author from the requirement to exhaust all available domestic remedies.[13] The State party further highlights that in the Federal Court of Australia, a party may apply to the Court for an order specifying the maximum costs between the parties that may be recovered for the proceeding. The fee for filing an application following the proceedings before the Australian Human Rights Commission is $55 and the Federal Circuit Court may also specify the maximum costs that may be recovered.[14]

4.3 The State party maintains that the author's claims under articles 2, 4, 5 and 9 of the Convention are inadmissible pursuant to article 2 (e) of the Optional Protocol for lack of substantiation. It notes that, according to the Human Rights Committee's jurisprudence, an author must substantiate all his or her allegations.[15] The State party submits that the author has not provided any evidence or substantiation of his claims under articles 2, 4 and 9 of the Convention.

4.4 As to the merits of the author's claim under article 12 of the Convention, the State party considers that the performance of jury duty does not fall within the scope of this article. In this connection, the State party submits that the obligations contained in article 12 do not establish new rights[16] and that this assertion is supported by the *travaux préparatoires* of the Convention. The State party further considers that the author does not provide evidence of an ongoing policy in the State party preventing deaf individuals from serving as jurors and reiterates that the Government of New South Wales will continue to monitor developments in disability aids, technologies and interpreter services, and review current policies to promote greater jury participation of people with hearing and sight impairments.[17] The State party further notes that article 12 (2) of the Convention concerns the recognition of legal capacity on an equal basis with others, but does not encompass all concepts of capacity or ability. It does not refer to the ability to perform an activity i.e. the performance of jury duty, but rather to the capacity to engage in acts with legal ramifications.[18] According to the State party, article 12 (5) enumerates the elements of legal personality and does not cover jury duty. Finally, as there was no consideration of the author's ability to perform jury duty, the State party concludes that his case does not relate to issues of legal capacity and falls outside the scope of article 12 of the Convention.

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[12] See communication No. 437/1990, *Patiño v. Panama*, of 1990, decision adopted on 21 October 1994, para. 5.2.

[13] The State party refers to the Human Rights Committee's conclusion in communication No. 397/1990, *P.S. v. Denmark*, decision of inadmissibility adopted on 22 July 1992, para. 5.4.

[14] Federal Court Rules 2011, rules 40.51 and 21.03; see also www.federalcircuitcourt.gov.au.

[15] See A/64/40 (Vol. I), para. 118; A/63/40 (Vol. I), para. 108; A/62/40 (Vol. I), para. 119; A/61/40 (Vol. I), para. 115.

[16] See general comment No. 1 (2014) of the Committee on article 12: equal recognition before the law, para. 1.

[17] Government of New South Wales, "Response, June 2010to the NSW Law Reform Commission". See also para. 4.1 above.

[18] See daily summary of discussion of the seventh session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, available from www.un.org/esa/socdev/enable/rights/adhoccom.htm, 18 January 2006, morning session, Chair.

4.5 As to the author's claim under article 12 (3) of the Convention that the Sheriff's refusal violated his right to access to the support he required, the State party reiterates that jury duty is not a manifestation of legal capacity, and therefore that there is no obligation on the State to provide support in that regard. In the alternative, the State party considers that article 12 (3) defines the scope of its operation, requiring States to take measures that are "appropriate" considering resource limitations and their "proportionality" to the obligation to ensure that persons with disabilities are able to make their own decisions as far as possible.[19] The State party reiterates that the State of New South Wales already provides adjustments to assist persons with hearing impairment to perform jury duty.[20]

4.6 As to the author's claim under article 13 of the Convention, the State party submits that it falls outside the scope of that provision as "effective access to justice" refers to the ability of persons with disabilities to gain access to the justice system when coming into contact with the law, but not to participate in the different components of the justice system. The State party further submits that, according to the *travaux préparatoires* for the Convention, jurors were not intended to be included in the categories of "direct" and "indirect" participants of article 13 as those terms relate to participants who are relevant to the substance and outcome of a case, such as the parties or witnesses.[21] It further submits that the "reasonable accommodation"' standard does not apply to article 13. It notes that, according to article 31 of the Vienna Convention on the Law of Treaties, treaties are to be interpreted in accordance with the ordinary meaning of the terms of the treaty in question and with the object and purpose of the treaty. In that connection, instead of referring to the term "reasonable accommodation", article 13 refers to "including through the provision of procedural and age-appropriate accommodations". Furthermore, "procedural and age-appropriate accommodations", only refers to the accommodations that are reasonable in view of the relevant procedure or age.[22]

4.7 As regards the author's claim under article 21 of the Convention, the State party agrees that steno-captioning is a form of communication. However, it submits that pursuant to article 21 (b) of the Convention, States parties are required to take all appropriate measures in the light of their resource constraints, without creating an absolute obligation on States. It also submits that the obligations of State parties under article 21 (b) must be realized progressively, subject to the limitations of their resources, and considers that the State of New South Wales has satisfied that standard. The State party further notes that the performance of jury duty does not extend to official interaction within the meaning of article 21 (b) of the Convention.[23] The State party therefore maintains that the author's claim under article 21 falls outside the scope of that article and is without merit.

4.8 As concerns the author's claims under article 29, the State party submits that it does not fall within the scope of that provision and is without merit. It submits that political rights within the meaning of article 29 are limited to those rights relating to aspects of the political process: voting, elections and representation– and does not cover jury duty. The State party considers that article 25 of the International Covenant on Civil and Political

[19] See daily summary of discussions of the fifth session of the Ad Hoc Committee, 25 January 2005, afternoon session, Coordinator.

[20] Government of New South Wales, "Response to the NSW Law Reform Commission".

[21] See daily summary of discussion of the fifth session of the Ad Hoc Committee, 28 January 2005, afternoon session, Chile, in cooperation with Australia, Bosnia and Herzegovina, Canada, Costa Rica, the Russian Federation, Mexico and some non-governmental organizations.

[22] See daily summary of discussions of the seventh session of the Ad Hoc Committee, 18 January 2006, afternoon session, Israel, Chair.

[23] See daily summary of discussions at the fifth session of the Ad Hoc Committee, 1 February 2005, morning session, European Union.

Rights is the main source of the content of article 29 and refers to commentaries on the scope of article 25 and the jurisprudence of the Human Rights Committee, which confirm that this provision does not extend to jury duty.[24] The State party further considers that the author's claim should be examined in the light of the conditions and restrictions that can be applied in compliance with general comment No. 25 (1996) of the Human Rights Committee on article 25 (the right to participate in public affairs, voting rights and the right of equal access to public service) and submits that the State of New South Wales has a clear system regulating the performance of jury duty and provides an exemption from it where there is "good cause".[25]

4.9 With respect to the author's claim under article 5 of the Convention, the State party considers it without merit. It notes that the Convention is a major step in recognizing and raising awareness of the rights of persons with disabilities, and on the need for a new approach in that regard. It considers that the Convention does not create new rights, but clarifies existing ones to ensure that they can be exercised by persons with disabilities.[26] Accordingly, article 5 should be interpreted consistently with the established jurisprudence that legitimate differential treatment does not constitute discrimination. Furthermore, even if States parties have a legal obligation to take steps to respect, protect, promote and fulfil the right to non-discrimination, equality and non-discrimination should not be understood as requiring identical treatment of all persons in all circumstances.[27] The State party therefore considers that its relevant national law is not discriminatory, insofar as the differential treatment provided for in the Jury Act aims at balancing the rights of persons with disabilities with the rights of an accused to a fair trial. Additionally, the law, practice and policy of the State of New South Wales facilitate the participation of persons with hearing impairments in jury duty where possible, in compliance with article 5 (3) of the Convention and the restriction is limited to cases where a person's disability would render him or her "unsuitable for or incapable of effectively serving as a juror".[28]

4.10 As regards the author's claims under articles 2, 4 and 9 of the Convention, the State party considers them without merit because they are unsubstantiated. It argues that it has a strong commitment to respecting the rights of persons with disabilities, and to enabling them to enjoy all human rights on an equal basis with others, in accordance with the terms of the Convention. It recognizes that States parties should refrain from acts or practices inconsistent with the Convention and should promote the research, development and availability of new technologies and ensure accessibility for all persons with disabilities.

Author's comments on the State party's observations

5.1 On 28 May 2015, the author rejected the State party's contentions that his communication was inadmissible pursuant to article 2 (d) of the Optional Protocol. He reiterates that he had no cause of action under the Disability Discrimination Act or the Anti-Discrimination Act that would have entitled him to bring a complaint before the State

[24] See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, 3rd ed. (Oxford University Press, 2013), p. 732, and Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised ed. (Kehl am Rhein, N.P. Engel, 2005), p. 570.

[25] Government of New South Wales, "Response to the NSW Law Reform Commission".

[26] See Peter Bartlett, "The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law", *Modern Law Review*, vol. 75, No. 5 (September 2012).

[27] W.A. McKean, "The meaning of discrimination in international and municipal law", *British Yearbook of International Law*, vol. 44 (1970).

[28] Jury Act 1977, art. 14 A (b).

party's courts. In the case *Gaye Prudence Lyons v. the State of Queensland*,[29] where the Sheriff of Queensland excluded the complainant from jury duty because she required an Australian Sign Language interpreter, the complainant was able to bring an impairment discrimination claim under the Anti-Discrimination Act 1991 (Qld) because the "administration of State laws and programs" is a protected area of life under that Act, and the Sheriff of Queensland, in excluding her from jury service, was administering the Jury Act 1995 (Qld). There is no equivalent protected area of life under the Anti-Discrimination Act 1977 and, while the Disability Discrimination Act includes the administration of Commonwealth laws and programmes as a protected area of life, the Jury Act 1977 (New South Wales), pursuant to which the author was excluded from jury duty, is a State Act. Furthermore, in Ms. Lyon's case, the Tribunal rejected her claims for direct and indirect discrimination on the basis that she was not excluded from jury duty because she was deaf, but because she required an Australian Sign Language interpreter, who could not be present in the jury room. The author asserts that this reasoning would be applied by any other court or tribunal in the State party, and that any claim for judicial review of the Sheriff's decision to exclude him from jury duty would fail because Australian law does not permit a deaf juror to receive live assistance in the jury room.[30]

5.2 As to the costs involved in conducting disability discrimination claims, the author submits that, while he could cover the fee to commence a disability discrimination claim, the party-party costs that are likely to be awarded against an unsuccessful applicant are ruinous. In that regard, the author explains that a party to such litigation can apply to the courts for a maximum costs order, but such orders are discretionary and rarely made. In exercising discretion to make such an order, courts consider a range of factors, including whether the applicant has an arguable claim.[31] It is therefore misleading for the State party to suggest that the author would have been able to obtain a maximum costs order while his claim did not have reasonable prospects of success.

5.3 The author reiterates that he was legally advised that he had no cause of action under the Disability Discrimination Act or the Anti-Discrimination Act. Australian legal practitioners bear a duty under section 345 of the Legal Profession Act 2004 not to commence or maintain a civil claim that does not have reasonable prospects of success. Should a legal practitioner do so, she or he could have the costs of the litigation awarded against him or her and be found guilty of professional misconduct, and might be suspended or have their licence to practise revoked.[32] The author therefore considers that the Committee should reject the State party's contention inviting the author to pursue a cause of action that does not have any prospect of success.

5.4 As concerns the State party's argument that the author's claims under articles 2, 4, 5 and 9 of the Convention should be held inadmissible, the author argues that article 2 is an interpretive provision under which steno-captioning must be identified as a form of communication, and a reasonable accommodation necessary for him to participate in jury duty, issues that have not been questioned by the State party.

5.5 As to article 4 of the Convention, the author notes that it sets out the general obligations of States parties, which apply to the realization of all the specific obligations of the Convention, including those set out in articles 12, 13, 21 and 29. The author contends

[29] *Lyons v. State of Queensland* [2013] QCAT 731 (ADL075-12); *Lyons v. State of Queensland* [2014] QCATA 302 (APL008-14).

[30] The author refers to the decision of the Supreme Court of Queensland in *Re: the Jury Act 1995 and an application by the Sheriff of Queensland* [2014] QSC 113.

[31] *Flew v. Mirvac Parking Pty Limited* [2006] FMCA 1818 at [15].

[32] Section 348 and chapter 4 of the Legal Profession Act 2004.

that the mere existence of the human rights violations he alleges demonstrates that the State party has failed to fulfil these general obligations. He further argues that the Government of New South Wales could provide the reasonable accommodation he requires and that, if the State party considers that there is a legal barrier to the participation of deaf people who require live assistance in the jury system, it has the constitutional power to make the necessary legislative reforms.[33] The author submits that the general obligations under article 9 apply for the realization of all the conventional specific obligations, which the State party has failed to fulfil in the present case. He maintains that steno-captioning is a "communication technology or system", and a form of "live assistance" required by him within the meaning of article 9 of the Convention.

5.6 As to the merits of his claims, the author refers to the general rules of interpretation as provided by the Vienna Convention. In that context, he notes that the term "legal capacity" under article 12 refers to the ability of a person to exercise legal rights and entitlements, perform legal obligations or duties, and bear legal responsibilities. There is no textual basis to support the contention that the reference to legal capacity in article 12 (2) is limited to the exercise of legal rights and entitlements or that the term otherwise has "a limited and specific meaning" or refers to a "subset of capacity".[34] It would frustrate the purpose of the Convention if legal capacity was given the narrow meaning proposed by the State party as it would restrict the application of article 12 (2) to people with cognitive impairments who require decision-making support.

5.7 The author further submits that in its response to the Law Reform Commission report in 2010, the Government of New South Wales clearly stated that the recommendation to enable deaf people to perform jury duty could not be supported at that time. In December 2013, the State of New South Wales provided an update on the government response, stating that, in view of serious concerns expressed by the stakeholders, the Government did not support changes to the Jury Act, but agreed to monitor developments in disability aids, technologies and interpreter services, to promote greater participation of people with hearing and sight impairment. According to the author, that demonstrates the ongoing policy of the State of New South Wales and its Sheriff and questions the legal capacity of deaf persons to perform jury duty. In addition, the undertaking to monitor developments refers to adjustments that do not involve live assistance to a deaf juror in the jury room.

5.8 The author argues that the provision of a stenographer is the "appropriate support" he needs to perform as a juror, in compliance with article 12 (3) of the Convention. The obligation of a State party to take "appropriate measures" to provide access by persons with disabilities to the support they may require in exercising their legal capacity is a specific obligation in article 12 that is additional to the general obligations set out in the cross-cutting articles in the Convention, including articles 4, 5 and 9. The author considers that article 12 must therefore be interpreted in the light of the cross-cutting obligations of article 5 (1) and (3), in so far as steno-captioning is a reasonable accommodation that promotes the author's equality before the law for the exercise of legal capacity. He adds that this reasonable accommodation should be accompanied by legislative measures to amend and repeal parts of the Jury Act to assert the ability of a stenographer to be present in the jury room, and facilitate communication between deaf and hearing jurors. The author notes that the State party does not contend that the provision of steno-captioning would constitute a

[33] *Commonwealth v. Tasmania* (1983) 158 CLR 1; *Mabo and others v. Queensland* (No. 2) (1992) 175 CLR 1.

[34] See daily summary of discussions at the seventh session of the Ad Hoc Committee, 17 January 2006, Chile, Jordan, Serbia and Montenegro; daily summary of discussions at the seventh session of the Ad Hoc Committee, 18 January 2006, China, Liechtenstein, the Russian Federation.

"disproportionate or undue burden", but rather that it has already taken measures to enable the participation of deaf people in jury duty, while those measures are not pertinent in his case.

5.9 The author submits that "direct and indirect participants" include individuals forming part of the legal system, including jurors.[35] He also submits that the participation or "intervention" of people with disability in the justice system, for example as judges, jurors, and legal practitioners, is a means for them to achieve access to justice and that he is not equating the obligation in article 5 of the Convention to provide "reasonable accommodation" with the obligation in article 13 to provide "procedural and age-appropriate accommodations". Both are interrelated, but their meaning and scope are different. In the present case, the provision of steno-captioning is a reasonable adjustment that promotes the author's participation in legal proceedings, which also requires a procedural accommodation such as the introduction of an oath for steno-captioners that they will keep jury deliberations secret or the issuance of a specific direction by the Court to all jurors that they do not attempt to discuss or deliberate on the case with the stenographer, but only interact with him or her as a facilitator of communication for the deaf juror. The author therefore considers that the State party has failed to establish that the provision of the required accommodation would impose a disproportionate or undue burden, and would therefore be unreasonable, thereby violating his rights under article 21, read alone and in conjunction with article 5.

5.10 The author further contends that the measures the State party purports to have taken do not fulfil the obligation imposed by article 21 (b) of the Convention and that there is no textual basis to support the State party's contention that the reference to "official interactions" is not applicable in the present case: a court is a public authority or body and its activities are focused on the public administration of justice, including through the conduct of trials by jury. A juror is a person holding a public responsibility in the administration of justice and is involved in interactions with other persons exercising public duties and responsibilities, including other jurors, and judicial officers.

5.11 Concerning his claim under article 29 of the Convention, the author submits that the Committee has jurisdiction to consider the alleged violation of the political rights of persons with disabilities, including their right to participate in the conduct of public affairs and the right of access to public service. In doing so, the Committee exercises jurisdiction to assess the measures taken by States parties to ensure that persons with disabilities enjoy their political rights on an equal basis with others. He notes that the term "conduct of public affairs" is a wide concept, which embraces the exercise of governmental power by all arms of government, including the administration of justice. Jurors play a part in the judicial power of the government as they directly participate to determine guilt or innocence in a criminal trial or liability in a civil trial. They are therefore engaged in the conduct of public affairs and of a public service, that being the public administration of justice. The author concludes that his exclusion from jury duty was not based on reasonable and objective grounds and that it was arbitrary and discriminatory.[36]

5.12 Finally, with respect to the State party's arguments that the author purports to identify and rely upon "new rights", the author submits that the terms of the Convention must be interpreted broadly, in consideration of the purpose of the Convention. He further argues that the notion of new rights cannot be used as a shield to prevent the application of traditional rights to the specific circumstances of persons with disabilities, even if that extends the traditional understandings of traditional rights.

[35] See daily summary of discussions at the seventh session of the Ad Hoc Committee, 18 January 2006.

[36] New South Wales Law Reform Commission, "Report 114: Blind or Deaf Jurors".

State party's further observations

6.1 On 23 October 2015,[37] the State party sent additional observations.[38] It reiterates that the Convention does not establish additional rights for persons with disabilities. It notes that a number of terms of the Convention, such as "legal capacity" and "direct and indirect participants", are not defined, that their meaning is ambiguous and that it is therefore appropriate to have recourse to the *travaux préparatoires* to understand them. The State party considers that the reference to "political rights" in article 29 of the Convention does not encompass and guarantee all human rights more broadly characterized as political rights in international human rights law and it submits that the performance of jury duty is not an aspect of the "conduct of public affairs" within the meaning of article 29.

6.2 The State party also submits that the measures adopted by the State of New South Wales are "appropriate" and "procedural and age appropriate accommodations", thereby complying with articles 12, 21, and 13 of the Convention. It further notes that the use of stenographers has an impact on the complexity, cost and duration of trials, and therefore has consequences for resources, as reflected in the response of the Government of New South Wales to the report of the Law Reform Commission in 2010.

B. Committee's consideration of admissibility and the merits

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether or not it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee and has not been or is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's argument that the author has not exhausted all available domestic remedies as he was entitled to make an application under the Disability Discrimination Act or the Anti-Discrimination Act to the Federal Court of Australia or the Federal Circuit Court within 60 days of the conclusion of the complaint process before the Australian Human Rights Commission. The Committee also notes the State party's submission that the fee for filing such an application is $55 and that the Federal Circuit Court may also specify the maximum costs that can be recovered. The Committee notes the author's arguments that bringing a complaint before a court could not provide an effective and reasonably accessible remedy under the Disability Discrimination Act or Anti-Discrimination Act in his case because: (a) the Disability Discrimination Act prohibits discrimination on the basis of disability in specified areas of public life, but does not apply to his case; (b) the Anti-Discrimination Act incorporates prohibitions of discrimination on the basis of disability in specified areas of public life that do not include the issue of jury duty. The Committee further notes the author's argument that any attempt to bring a claim related to the violations he alleges before the courts under the Disability Discrimination Act or the Anti-Discrimination Act would also fail on the basis of the national legislation and jurisprudence on discrimination, thereby excluding the possibility for him to obtain a maximum costs order from a federal court because his claim does not have reasonable prospects of success.

[37] The State party's additional observations were sent to the author on the same day. No comments were received from the author.

[38] Committee's general comment No. 1 (2014), para. 1.

7.4 In the light of the above, the Committee considers that the information provided by the parties does not enable it to conclude that the author's complaint under the Anti-Discrimination Act or the Disability Discrimination Act would have had a reasonable prospect of success and would have provided the author with an effective remedy.[39] Given the nature of the claims under consideration and in the light of the information provided by the parties, the Committee considers that the author has exhausted all available domestic remedies likely to bring effective relief,[40] and that article 2 (d) of the Optional Protocol therefore does not pose an obstacle to the admissibility of the present communication.

7.5 The Committee further notes the State party's submission that the author's claims under articles 2, 4, 5 and 9 of the Convention are inadmissible for lack of substantiation. As regards the author's claims under articles 2 and 4, the Committee recalls that, in view of their general character, those articles do not in principle give rise to free-standing claims, and can only be invoked in conjunction with other substantive rights guaranteed under the Convention.[41] The Committee therefore considers that the author's claims under articles 2 and 4 read alone are inadmissible under article 2 (e) of the Optional Protocol. As to the author's claims under articles 5 and 9, the Committee considers that those claims are sufficiently substantiated for the purpose of admissibility and proceeds to their examination on the merits.

7.6 As regards the author's claim under article 12 of the Convention that he was denied his right to enjoy legal capacity on an equal basis with others on account of the Sheriff's refusal to provide him with steno-captioning, the Committee notes that the Sheriff justified her decision on the basis of section 48 of the Jury Act 1977, by asserting that by introducing a non-jury person to provide steno-captioning would breach the principle of confidentiality of deliberations. The Committee therefore notes that the State party did not question at any time the author's legal capacity to perform jury duty. Accordingly, the Committee concludes that the author's claim is incompatible *ratione materiae* with article 12 of the Convention and is therefore inadmissible under article 2 (b) of the Optional Protocol.

7.7 The Committee notes that the State party has raised no objections to the admissibility of the author's claims under articles 13, 21 and 29 of the Convention. Accordingly, it declares those parts of the communication admissible and proceeds with the examination of the merits.

Consideration of the merits

8.1 The Committee has considered the case in the light of all the information provided by the parties, in compliance with article 5 of the Optional Protocol.

8.2 The Committee notes the author's claim that the refusal to provide him with steno-captioning to enable him to perform jury duty was discriminatory as it amounted to a denial of reasonable accommodation, in violation of article 5 (1) and (3) of the Convention. The Committee also notes the State party's submission that there has been no violation of the author's rights under article 5, as the pertinent national law is not discriminatory and the differential treatment provided for in the Jury Act is legitimate. The State party further considers that its law and policy provide reasonable accommodation in accordance with the requirements of the Convention.

[39] See communication No. 8/2012, *X. v. Argentina*, Views adopted on 11 April 2014, para. 7.4.

[40] Ibid.

[41] See communications No. 3/2011, *H.M. v. Sweden*, Views adopted on 19 April 2012, para. 7.3, and No. 2/2010, *Groninger v. Germany*, Views adopted on 4 April 2014, para. 6.2.

8.3 The definition of discrimination on the basis of disability in article 2 of the Convention explicitly states that "it includes all forms of discrimination, including denial of reasonable accommodation". In the present case, the author was summoned three times to participate in jury duty, including twice after having indicated that he was willing to take part in the selection, but that he would need steno-captioning to do so. The Committee further notes that, when rejecting the author's request for steno-captioning, the Sheriff advised him to submit a medical certificate certifying that he is deaf, and that otherwise he would face a fine of $1,100 for failing to attend jury service. Additionally, the Sheriff's office clearly told the author that he could not perform jury duty because he is deaf, and based the refusal to provide steno-captioning on section 48 of the Jury Act 1977, considering that the introduction of a non-jury person in the deliberations room would be incompatible with the confidentiality of jury deliberations. In that regard, the Committee recalls that discrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilities.[42] Further, under article 5 (1), States parties must ensure that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law and that, under article 5 (3), States parties must take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination.

8.4 In that connection, the Committee recalls that, under article 2 of the Convention, "reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[43] The Committee considers that, when assessing the reasonableness and proportionality of accommodation measures, States parties enjoy a certain margin of appreciation.[44] However, States parties must ensure that such an assessment is made in a thorough and objective manner, covering all the pertinent elements, before reaching a conclusion that the respective support and adaptation measures would constitute a disproportionate or undue burden for a State party.[45]

8.5 In the present case, the Committee observes that the adjustments provided by the State party for people with hearing impairments would not enable the author to participate in a jury on an equal basis with others. It also notes that, while the State party argues that the use of stenographers has an impact on the complexity, cost and duration of trials, it does not provide any data or analysis to demonstrate that it would constitute a disproportionate or undue burden. Furthermore, while the confidentiality principle of jury deliberations must be observed, the State party does not provide any argument justifying that no adjustment, such as a special oath before a court, could be made to enable the person assisting with steno-captioning to perform his or her functions without affecting the confidentiality of the deliberations of the jury. The Committee finally notes that steno-captioning is not a novelty and that some judges and attorneys with hearing impairments actually perform their daily work with that kind of adjustment.[46] On the basis of the information before it, the

[42] See communication No. 10/2013, *S.C. v. Brazil*, decision of inadmissibility adopted on 2 October 2014, para. 6.4.

[43] See communication No. 5/2011, *Jungelin v. Sweden*, Views adopted on 2 October 2014, para. 10.4.

[44] Ibid., para. 10.5.

[45] Ibid., para. 10.6.

[46] See Douglas M. Pravda, "Understanding the Rights of Deaf and Hard of Hearing Individuals to Meaningful Participation in Court Proceedings", *Valparaiso University Law Review*, vol. 45, No. 927 (Spring 2011); Sarah Geer, "Jury Duty, For some it's a chore, for others it's a hard won right" (available at https://www.gallaudet.edu/Documents/PublicRelations/GT1989.pdf); Dorothy Smith, "Communication in the Courtroom: Technology is helping to provide equal access to the law" (Spring

Committee therefore considers that the State party has not taken the necessary steps to ensure reasonable accommodation for the author and concludes that the refusal to provide steno-captioning, without thoroughly assessing whether that would constitute a disproportionate or undue burden, amounts to disability based discrimination, in violation of the author's rights under article 5 (1) and (3) of the Convention.

8.6 As regards the author's claim under article 9 (1) of the Convention, the Committee recalls that under that provision, States parties have the obligation to take appropriate measures to "enable persons with disabilities to live independently and participate fully in all aspects of life". In that connection, the Committee notes that the performance of jury duty is an important aspect of civic life within the meaning of article 9 (1), as it constitutes a manifestation of active citizenship. The Committee further notes the State party's submission that it devotes significant efforts and resources to ensuring that persons with disabilities are able to enjoy all human rights fully, on an equal basis with others. The Committee also recalls that, according to its general comment No. 2 (2014) on article 9: accessibility, the obligation to implement accessibility is unconditional,[47] that it is important to address accessibility in all its complexity, including communication. Likewise, access should be ensured on an equal basis in an effective manner, in accordance with the prohibition of discrimination; denial of access should be considered to constitute a discriminatory act.[48] In the present case, by refusing to provide steno-captioning, the State party did not take the appropriate measures to enable the author to perform jury duty, thereby preventing his participation in a clear "aspect of life", in violation of his rights under article 9 (1) read alone and in conjunction with articles 2, 4, and 5 (1) and (3) of the Convention.

8.7 As to the author's claim under article 21 of the Convention, the Committee notes the State party's argument that the standard of "accepting and facilitating the use of sign languages" and other means of communication has been met in the present case by the State of New South Wales and that obligations under article 21 are to be achieved progressively. The Committee also notes the author's contention that article 21 does not contain rights and obligations that are subject to progressive implementation and that the measures the State party purports to have taken to enable deaf people to participate in jury duty are not adapted to his needs.

8.8 The Committee recalls that, pursuant to article 21 (b) of the Convention, States parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication by accepting and facilitating different means and formats of communication in official interactions. The Committee further recalls that, according to article 2 of the Convention, "communication" includes languages and alternative modes, means and formats of communication, obviously encompassing steno-captioning. In that context, the Committee notes the author's argument that a juror is a person holding a public responsibility in the administration of justice "in interactions with other persons", including other jurors, and judicial officers, and that such interactions therefore constitute "official interactions" within the meaning of article 21. In view thereof, the Committee considers that the refusal to provide the author with the format of communication he needs to enable him to perform jury duty, and therefore to express himself in official interaction, amounted to a violation of article 21 (b) read alone and in conjunction with articles 2, 4, and 5 (1) and (3) of the Convention.

1989).

[47] See para. 25.

[48] Ibid., para. 13.

8.9 As regards the author's claims under articles 13 (1) and 29 of the Convention, the Committee notes the State party's argument that this claim is without merit, as it considers that "effective access to justice" refers to the accessibility to the justice system and that the terms "direct" and "indirect" participants do not encompass jury duties. The State party also argues that the "reasonable accommodation" standard does not apply to article 13. The author in turn asserts that "direct and indirect participants" relate to individuals taking part in the legal system and that obligations under article 5 to provide "reasonable accommodation" apply for the realization of these rights. The Committee recalls that, pursuant to article 13, States parties have to ensure effective access to justice for persons with disabilities on an equal basis with others in order to facilitate their effective role as "direct and indirect participants, in all phases of legal proceedings", including through the provision of procedural and age-appropriate accommodations. The Committee notes that the performance of jury duty is an integral part of the Australian judicial system and, as such, it constitutes "participation" in legal proceedings. The Committee further recalls that article 29 (b) requires States to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs. Attention must therefore be given to the participation of persons with disabilities in the justice system in capacities besides those of claimant, victim or defendant, including in jury service, on an equal basis with others. In view thereof, the Committee considers that the decision of the Sheriff not to provide the author with steno-captioning amounted to a violation of article 13 (1), read alone and in conjunction with articles 3, 5 (1), and 29 (b), of the Convention.

C. Conclusion and recommendations

9. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5 (1) and (3), 9 (1), 13 (1) read alone and in conjunction with articles 3, 5 (1) and 29 (b), and 21 (b) read alone and in conjunction with articles 2, 4 and 5 (1) and (3) of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) With respect to the author: the State party is under an obligation:

(i) To provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;

(ii) To enable his participation in jury duty, providing him with reasonable accommodation in the form of steno-captioning in a manner that respects the confidentiality of proceedings, at all stages of jury selection and court proceedings;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future, including by:

(i) Ensuring that every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his or her request for adjustment is carried out, and all reasonable accommodation is duly provided to enable his or her full participation;

(ii) Adopting the necessary amendments in the relevant laws, regulations, policies and programmes, in close consultation with persons with disabilities and their representative organizations;

(iii) Ensuring that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is

provided to local authorities, such as the Sheriff, and the judicial officers and staff involved in facilitating the work of the judiciary.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee within six months a written response, including any information on any action taken in the light of the present views and recommendations of the Committee. The State party is also requested to publish the Committee's views and have them translated into the official language of the State party and widely disseminated, in accessible formats, in order to reach all sections of the population.